



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,347	10/22/2002	Jerzy A. Georgiades	AAT-12792	3120
7609	7590	03/28/2005	EXAMINER	
RANKIN, HILL, PORTER & CLARK, LLP 925 EUCLID AVENUE, SUITE 700 CLEVELAND, OH 44115-1405			CHISM, BILLY D	
			ART UNIT	PAPER NUMBER
			1654	

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/980,347

Applicant(s)

GEORGIADIS, JERZY A.

Examiner

B. Dell Chism

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-35 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

7/1

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions that are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

The following inventions (herein referred to as Groups) are divided by SETs of Groups. The Groups of each set are drawn, in their respective relationship, to the 50 amino acid sequences instantly claimed or to methods of using or making the 50 amino acid sequences, or to antibodies for the 50 amino acid sequences. The compounds are numbered as SEQ ID NOs: 1-50, totaling 50 structurally and functionally different compounds. Each SET contains 50 Groups with each Group of each SET corresponding in sequence with the compounds of SEQ ID NOs: 1-50. To illustrate the lack of unity technique used herein, SEQ ID NO: 50 corresponds to the peptide of Group 50 of SET 1, it corresponds to the method of making a medicament by using SEQ ID NO: 50 of Group 100 in SET 2, etc..., through each additional set. The election of a SET will not be considered a correct response to the restriction requirement. Applicants are only allowed to elect one Group from one SET, e.g., Group 50 of SET I.

Art Unit: 1654

SET I

Groups 1-50, claim(s) 1-8, 21-27, drawn to amino acid sequences.

This set comprises 50 different inventions that lack unity. If applicants elect from this SET I, then they must elect just one invention to be chosen from Groups 1-50, e.g., Group 12 which would be to SEQ ID NO: 12.

SET II

Groups 51-100, claim(s) 9-14 and 19-20, drawn to methods of using to make a medicament.

This set comprises 50 different inventions that lack unity. If applicants elect from this SET II, then they must elect just one invention to be chosen from Groups 51-100, e.g., Group 62 which would correspond to methods of using SEQ ID NO: 12 in making medicaments.

SET III

Groups 101-150, claim(s) 9-10 and 15-17, 33-35, drawn to methods of treating patients in need thereof a medicament.

This set comprises 50 different inventions that lack unity. If applicants elect from this SET III, then they must elect just one invention to be chosen from Groups 101-150, e.g., Group 112 which would correspond to methods of using SEQ ID NO: 12 in treating a patient in need thereof a medicament comprising SEQ ID NO: 12.

SET IV

Groups 151-200, claim(s) 28-30, drawn to methods of using the amino acid sequence as a dietary supplement.

This set comprises 50 different inventions that lack unity. If applicants elect from this SET IV, then they must elect just one invention to be chosen from Groups 151-200, e.g., Group 162 which would correspond to methods of using SEQ ID NO: 12 as a dietary supplement.

SET V

Groups 201-250, claim(s) 1-8, 21-27, drawn to antibodies to amino acid sequences.

This set comprises 50 different inventions that lack unity. If applicants elect from this SET V, then they must elect just one invention to be chosen from Groups 201-250, e.g., Group 212 which would be to an antibody to SEQ ID NO: 12.

2. The inventions listed as Groups 1-250 do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

Art Unit: 1654

The situation involving the so-called Markush practice wherein a single claim defines alternatives (chemical or non-chemical) is also governed by PCT Rule 13.2. In this special situation, the requirement of a technical interrelationship and the same or corresponding special technical features as defined in PCT Rule 13.2, shall be considered to be met when the alternatives are of a similar nature. When the Markush grouping is for alternatives of chemical compounds, they shall be regarded as being of a similar nature where the following criteria are fulfilled:

- (A) All alternatives have a common property or activity; **and**
- (B)(1) A common structure is present, i.e., a significant structural element is shared by all of the alternatives; or
- (B)(2) In cases where the common structure cannot be the unifying criteria, all alternatives belong to a recognized class of chemical compounds in the art to which the invention pertains.

In paragraph (B)(1), above, the words "significant structural element is shared by all of the alternatives" refer to cases where the compounds share a common chemical structure which occupies a large portion of their structures, or in case the compounds have in common only a small portion of their structures, the commonly shared structure constitutes a structurally distinctive portion in view of existing prior art, and the common structure is essential to the common property or activity. The structural element may be a single component or a combination of individual components linked together.

In paragraph (B)(2), above, the words "recognized class of chemical compounds" mean that there is an expectation from the knowledge in the art that members of the class will behave in the same way in the context of the claimed invention. In other words, each member could be substituted one for the other, with the expectation that the same intended result would be achieved.

In the instant claims, the amino acid sequences fail to meet the requirements listed above for maintaining unity of invention regarding structures claimed under Markush claims.

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to B. Dell Chism, whose telephone number is (571) 272-0962. The examiner can normally be reached on M-F 08:30 AM - 5:00 PM. If attempts to reach the

Art Unit: 1654

examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, PhD can be reached on (571) 272-0974.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

B. Dell Chism

A handwritten signature in black ink, appearing to be "B. Dell Chism", enclosed within a hand-drawn oval.

PATENT EXAMINER